

UNITED STATES DISTRICT COURT

Southern

District of

New York

Howard Effron

SUMMONS IN A CIVIL ACTION

V.

Element 21 Golf, Inc. and Nataliya Hearn

CASE NUMBER:

08 CV 09651
JUDGE MARRERO

TO: (Name and address of Defendant)

Element 21 Golf, Inc.
200 Queens Quay East, Unit 1,
Toronto, Ontario

Nataliya Hearn
c/o Element 21 Golf, Inc.
200 Queens Quay East, Unit 1
Toronto, Ontario

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Siller Wilk LLP
Stuart M. Riback
675 Third Avenue
New York, NY 10017

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

JAN 29 2008

CLERK

Mano Quintero

DATE

(By) DEPUTY CLERK

JUDGE MARRERO

$$-X$$

:

•

⋮

⋮

Case No. **08 CV 0965**

JAN 29 2008
 U.S.D.C. S.D. N.Y.
 CASHIERS

{00203275v1}

raise funds for E21. The 3/28 Agreement was negotiated and executed in Manhattan. Berk has since assigned to Effron his interest in this agreement.

8. The 3/28 Agreement provides, among other things, that:

- “Effron-Berk shall receive 5% of the stock of [E21] as a non-refundable retainer.”
- “Effron Berk shall receive 10% of the money they raise directly or indirectly and an option for four years on 10% of the stock given for the money at the same price as paid for the stock.”
- “Effron will be hired as a consultant after the money is raised at a mutually agreed fair market retainer.”

9. Later that year, Effron entered into another agreement with E21 and its CEO, Nataliya Hearn. That agreement is dated December 31, 2005, and provides in relevant part as follows:

(1) “This agreement is in addition to the Agreement of 03/28/05 between Hearn, [E21] and Effron, which remains in full force.”

(2) “Effron will have the right to join E21, when E21 has received from Effron sources of at least \$1,000,000 towards its goal of \$6,000,000. Effron will have the title of Chairman and shall receive the same remuneration as Hearn (presently set as \$175,000 per year, with \$100,000 per year paid the first two years and \$75,000 accrued. The chairman position will have to be confirmed by the funding group”

(4) Effron shall receive all of the normal company perks.

E21's refusal to honor its agreements

10. As a result of his initial efforts to obtain funding for E21, Effron brought to E21 an investor group, that invested \$770,000 in E21.

11. E21 never issued to Effron the stock he was owed for his nonrefundable retainer.

12. Thereafter, Effron introduced to E21 an investor who was interested in investing up to \$7 million.

13. E21 refused to cooperate with the potential investor and refused to provide information and other cooperation that investors normally require. As a result of this deliberate stonewalling of the investor group, Effron was improperly deprived of the opportunity to obtain funding of at least \$1,000,000 for E21. Had E21 not stood in the way of Effron's fundraising efforts by refusing to cooperate with investors, he would have been able to raise at least \$1,000,000 and would have qualified to be Chairman, and would have reaped the rewards of that position as set forth in the parties' agreement.

14. Although Effron brought to E21 investors ready, willing and able to invest, E21 never hired Effron as a consultant, whether at a fair market price or any other price.

15. Effron received no company perks at all.

16. Effron was not issued warrants as required by the parties' agreements.

FIRST CLAIM FOR RELIEF (Breach of Contract)

17. Effron incorporates herein by reference the foregoing allegations.

18. By failing to pay Effron his nonrefundable retainer, defendants have breached the 3/28 Agreement.

19. By deliberately obstructing investment by the investor group Efron brought to E21, defendants have prevented Effron from enjoying the fruits of the parties' agreements, thereby breaching their contractual obligations.

20. Defendants are liable to Effron for damages.

SECOND CLAIM FOR RELIEF
(Breach of Good Faith and Fair Dealing)

21. Effron incorporates herein by reference the foregoing allegations.
22. E21 by its actions prevented Effron from reaping the benefits of his agreement with E21 and Hearn.
23. Defendants are liable to Effron for damages.

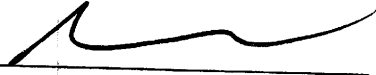
THIRD CLAIM FOR RELIEF
(Quantum Meruit)

24. Effron incorporates herein by reference the foregoing allegations.
25. Effron provided services to defendants. Defendants knew that Effron was not providing the services gratuitously and that he expected payment.
26. As an alternative to the foregoing two claims, Effron should be paid the value of his services.

WHEREFORE, Effron prays that he be awarded judgment in his favor on the foregoing claims in an amount estimated to be no less than \$3 million, together with costs, interest and attorneys fees to the extent permitted by law, and such other and further relief as seems just to the Court.

Dated: New York, New York
January 24, 2008

SILLER WILK LLP

By: 
Stuart M. Riback (SMR 2443)
675 Third Avenue
New York, New York 10017-5704
(212) 421-2233

Attorneys for Plaintiff Howard Effron

JS 44-CV-00965
REV. 11-2006**JUDGE MARRERO**

CIVIL COVER SHEET

08 CV 0965

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Howard Effron

DEFENDANTS

Element 21 Golf, Inc., and Nataliya Hearn

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Siller Wilk LLP
675 Third Avenue, New York, NY 10017 (212) 421-2233

ATTORNEYS (IF KNOWN)

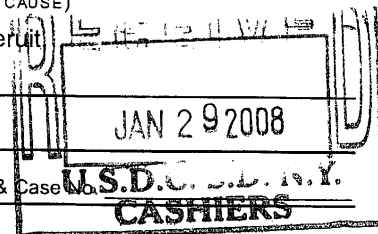
Stuart M. Riback

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

This is an action for breach of contract, breach of good faith and fair dealing, and quantum meruit.

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously AssignedIf yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date

& Case No.



(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
CONTRACT	PERSONAL INJURY	PERSONAL INJURY		
[] 110 INSURANCE	[] 310 AIRPLANE	[] 362 PERSONAL INJURY -	[] 422 APPEAL	[] 400 STATE
[] 120 MARINE	[] 315 AIRPLANE PRODUCT	MED MALPRACTICE	28 USC 158	REAPPORTIONMENT
[] 130 MILLER ACT	LIABILITY	[] 365 PERSONAL INJURY	[] 423 WITHDRAWAL	[] 410 ANTITRUST
[] 140 NEGOTIABLE	[] 320 ASSAULT, LIBEL &	PRODUCT LIABILITY	28 USC 157	[] 430 BANKS & BANKING
INSTRUMENT	SLANDER	[] 368 ASBESTOS PERSONAL		[] 450 COMMERCE/ICC
[] 150 RECOVERY OF	[] 330 FEDERAL	INJURY PRODUCT	[] 630 LIQUOR LAWS	RATES/ETC
OVERPAYMENT &	EMPLOYERS'	LIABILITY	[] 640 RR & TRUCK	[] 460 DEPORTATION
ENFORCEMENT OF	LIABILITY		[] 650 AIRLINE REGS	[] 470 RACKETEER INFLU-
JUDGMENT	[] 340 MARINE	PERSONAL PROPERTY	[] 660 OCCUPATIONAL	ENCED & CORRUPT
[] 151 MEDICARE ACT	[] 345 MARINE PRODUCT		SAFETY/HEALTH	ORGANIZATION ACT
[] 152 RECOVERY OF	LIABILITY	[] 370 OTHER FRAUD	[] 690 OTHER	(RICO)
DEFAULTED	[] 350 MOTOR VEHICLE	[] 371 TRUTH IN LENDING		[] 480 CONSUMER CREDIT
STUDENT LOANS	[] 355 MOTOR VEHICLE	[] 380 OTHER PERSONAL	LABOR	[] 490 CABLE/SATELLITE TV
(EXCL VETERANS)	PRODUCT LIABILITY	PROPERTY DAMAGE	[] 710 FAIR LABOR	[] 810 SELECTIVE SERVICE
[] 153 RECOVERY OF	[] 360 OTHER PERSONAL	PRODUCT LIABILITY	STANDARDS ACT	[] 850 SECURITIES/
OVERPAYMENT OF	INJURY		LABOR/MGMT	COMMODITIES/
VETERANS BENEFITS			RELATIONS	EXCHANGE
[] 160 STOCKHOLDERS SUITS			[] 730 LABOR/MGMT	[] 875 CUSTOMER
[x] 190 OTHER CONTRACT			REPORTING &	CHALLENGE
[] 195 CONTRACT PRODUCT			DISCLOSURE ACT	12 USC 3410
LIABILITY			RAILWAY LABOR ACT	[] 891 AGRICULTURE ACTS
[] 196 FRANCHISE			OTHER LABOR	[] 892 ECONOMIC
			LITIGATION	STABILIZATION ACT
			[] 791 EMPL RET INC	[] 893 ENVIRONMENTAL
			SECURITY ACT	MATTERS
				[] 894 ENERGY
				ALLOCATION ACT
				[] 895 FREEDOM OF
				INFORMATION ACT
				[] 900 APPEAL OF FEE
				DETERMINATION
				UNDER EQUAL ACCESS
				TO JUSTICE
				[] 950 CONSTITUTIONALITY
				OF STATE STATUTES
				[] 890 OTHER STATUTORY
				ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$ 3,000,000

OTHER

JUDGE

DOCKET NUMBER

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding ☐ 2a. Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court
AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☒ 4 DIVERSITY

**IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)**

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF <input checked="" type="checkbox"/> 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 <input checked="" type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 <input checked="" type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Howard Effron
123 East 54th Street, Apt. 4D
New York, New York 10022

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Element 21 Golf, Inc.
200 Queens Quay East, Unit 1
Toronto, Ontario

Nataliya Hearn
c/o Element 21 Golf, Inc.
200 Queens Quay East, Unit 1
~~Toronto, Ontario~~

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

1/28/08

[] NO

RECEIPT #

☒ YES (DATE ADMITTED Mo. 08 Yr. 1986)
Attorney Bar Code # SMR2443

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)